

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-081080
		C-081081
Plaintiff-Respondent-	:	TRIAL NOS. B-0709112
Appellee,		SP-0800398
	:	
vs.		<i>JUDGMENT ENTRY.</i>
	:	
CRAIG SAUNDERS,	:	
	:	
Defendant-Petitioner-	:	
Appellant.	:	

We have sua sponte restored this appeal to, and consider it, on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

On February 25, 1991, in Connecticut defendant-petitioner-appellant Craig Saunders was convicted of sexual assault in the third degree. After being released from the Connecticut Department of Corrections on June 24, 1993, Saunders served five years of community control. Under Connecticut law, Saunders has a duty to register for life as a sexual offender. Saunders moved to West Virginia in 2002.

In May of 2006, Saunders moved to Ohio. The Hamilton County Sheriff notified Saunders in February 2007 of his duty under former R.C. Chapter 2950 to register in Ohio as a sexual offender. On July 27, 2007, Saunders registered an address of 117 East 12th Street. He was told to report back to register on October 27, 2007. On August 16, 2007, Saunders registered an address on Colerain Avenue. The sheriff

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

informed Saunders that he would have to leave the Colerain Avenue address because it was too close to a school. On September 4, 2007, Saunders registered with the sheriff as homeless. At that time, Saunders was told that he would have to check in with the sheriff on a daily basis. From September 4 to October 12, 2007, Saunders reported in person to the sheriff on a daily basis. Saunders notified the sheriff on October 12, 2007, that he was going to sleep in Washington Park. Saunders was told to check in with the sheriff in person on October 15, 2007. Saunders informed the sheriff that he was starting a job with a trucking company on Monday, October 15. Saunders worked the entire week of October 15, and he was unable to report in person to the sheriff on October 15, 16, 17, and 19, 2007. Saunders telephoned the sheriff on October 18.

When Saunders failed to report to the sheriff in person on October 15, 16, 17, and 19, 2007, he was arrested at work and charged on November 7, 2007, in the case numbered B-0709112 with failing to notify the sheriff of a change of address under former R.C. 2950.05(E)(1).

In late 2007, Saunders received a notice from the Ohio Attorney General stating that he had been reclassified under Am.Sub.S.B. No. 10 ("Senate Bill 10") as a Tier III sex offender and that he was required to register with the local sheriff every 90 days for life. On February 28, 2008, Saunders filed an R.C. 2950.031(E) petition to contest his reclassification under the case numbered SP-0800398. Saunders also filed an R.C. 2950.11(F)(2) motion for immediate relief from the community-notification provisions.

Saunders filed a motion to dismiss the criminal charge, which the trial court denied. Saunders pleaded no contest to and was found guilty of attempted failure to notify the sheriff of a change of address. The trial court overruled Saunders's constitutional challenge to Senate Bill 10. The court found that Saunders's Connecticut conviction for sexual assault in the third degree corresponded to a conviction for gross

sexual imposition under Ohio law, a Tier I offense. The court determined that Saunders was subject to Tier I registration requirements under Senate Bill 10. As a Tier I offender, Saunders is required to register for 15 years and to verify his address annually. The trial court gave Saunders ten years' credit toward his registration and verification requirements.

Saunders appealed his conviction for attempted failure to notify the sheriff of a change of address, in the case numbered C-081080, and the trial court's determination that he was subject to Senate Bill 10's registration requirements, in the case numbered C-081081. We have consolidated the appeals.

We first address Saunders's second assignment of error, which alleges that requiring him to register as a sexual offender in Ohio under Senate Bill 10 violates his constitutional right to travel. Saunders argues that former R.C. Chapter 2950 was unconstitutionally applied to require him to register as a sexual offender in Ohio because it violated his constitutional right to travel. Saunders argues that because former R.C. Chapter 2950 was unconstitutional as applied to him, he should not have been required to register under it and, therefore, that his reclassification under Senate Bill 10 was unconstitutional.

Under former R.C. Chapter 2950, a sex offender who had committed his offense in Ohio was required to register if he was serving a sentence for a sex offense and was released on or after July 1, 1997, was convicted of a sex offense on or after July 1, 1997, or was a habitual sexual offender immediately prior to July 1, 1997, who was required to register. Former R.C. 2950.04(A)(3)(a) imposed a duty to register on a person who had been convicted of or had pleaded guilty to committing a sexually-oriented offense in another state, regardless of when that offense was committed, if that person had a duty to register as a sex offender under the law of the other state as a result of the conviction

or guilty plea and moved into the state of Ohio after July 1, 1997.² Saunders argues that this “disparity” in the state of Ohio’s treatment of in-state offenders and out-of-state offenders who move to Ohio violated the constitutional right to travel.

Statutes enacted in Ohio are presumed to be constitutional.³ That presumption applies to former R.C. Chapter 2950.⁴ Saunders has the burden to establish beyond a reasonable doubt that former R.C. 2940.04(A)(3)(a) is unconstitutional.⁵

In *Saenz v. Roe*,⁶ the United State Supreme Court identified three components of the constitutional right to travel: (1) it protects the right of a citizen of one state to enter and leave another state; (2) it protects the right to be treated as a welcome visitor rather than as a hostile visitor when temporarily in the second state; and (3) it protects the right to be treated like other citizens of a state when the traveler decides to become a permanent resident. At issue in this case is the third component, which is grounded in the Privileges or Immunities Clause of the Fourteenth Amendment.⁷

“Any deprivation of the right to travel * * * must be evaluated under a compelling-interest test. Accordingly, the legislation must be narrowly tailored to serve a compelling government interest.”⁸

Ohio has a compelling state interest in protecting its citizens from sexual offenders.⁹ Saunders is an out-of-state sex offender deemed by a court of competent jurisdiction to be dangerous enough to register for life. “It is reasonable to assume that

² See *Doe v. Leis*, 1st Dist. No. C-050591, 2006-Ohio-4507, at ¶15.

³ See *Sewell v. State*, 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995, at ¶16, citing *State v. Ferguson*, 120 Ohio St.3d 7, 2008-Ohio-4824, 896 N.E.2d 110.

⁴ See *id.*

⁵ See *id.*

⁶ (1999), 526 U.S. 489, 119 S.Ct. 1518.

⁷ See *id.*

⁸ See *State v. Burnett*, 93 Ohio St.3d 419, 2001-Ohio-1581, 755 N.E.2d 857 (internal citations omitted).

⁹ See *Logue v. Leis*, 169 Ohio App.3d 356, 2006-Ohio-5597, 862 N.E.2d 900.

an out-of-state offender convicted of a non-exempt offense and already subject to lifetime reporting requirements is dangerous.”¹⁰

Saunders argues that he was treated differently than other Ohio residents. But Saunders was treated the same as other similarly-situated sexual offenders moving into Ohio. Further, former R.C. Chapter 2950 required Ohio citizens who had committed sex offenses in another state and were required to register under that state’s laws to register in Ohio if they returned after July 1, 1997. Also, Ohio habitual sexual offenders who had committed a sex offense and were required to register immediately before July 1, 1997, were required to register under former R.C. Chapter 2950. Former R.C. Chapter 2950 was narrowly tailored to include those sexual offenders deemed most dangerous, including those like Saunders subject to lifetime reporting requirements in another jurisdiction.

Saunders has not shown that former R.C. Chapter 2950 and Senate Bill 10 infringed upon his right to travel. If anything, the statutes facilitated it. Saunders was under a lifetime registration requirement in Connecticut. Under the Ohio sexual-offender statutes, his registration requirement has been reduced to fifteen years, with credit for 10 years’ reporting.

We hold that former R.C. Chapter 2950 was constitutional as applied to Saunders to require his registration as a sexual offender and that, therefore, his reclassification under Senate Bill 10 as a Tier I offender was constitutional. The second assignment of error is overruled.

¹⁰ See *id.* at ¶15.

We now turn to the first assignment of error, which alleges that Saunders's conviction for attempted failure to notify the sheriff of an address change was based on insufficient evidence.

Saunders pleaded no contest to attempted failure to notify the sheriff of a change of address, a first-degree misdemeanor. "A plea to a misdemeanor offense of 'no contest' or words of similar import shall constitute a stipulation that the judge or magistrate may make a finding of guilty or not guilty from the explanation of the circumstances of the offense."¹¹ We stated in *State v. Valentine*,¹² "To find the defendant guilty, the explanation of circumstances must contain sufficient information to support all the essential elements of the offense. When the explanation of circumstances fails to satisfy all the elements of an offense, the defendant has a substantive right to be discharged by a finding of not guilty."¹³

Former R.C. 2950.05(E)(1) provides that "[n]o person who is required to notify a sheriff of a change of address pursuant to division (A) of this section shall fail to notify the appropriate sheriff in accordance with that division."

Former R.C. 2950.05(A) states, "If an offender * * * is required to register pursuant to section 2950.04 * * * the offender * * * at least twenty days prior to changing the offender's * * * residence address, * * * during the period during which the offender * * * is required to register, shall provide written notice of the residence * * * address change * * * to the sheriff with whom the offender * * * most recently registered the address under section 2950.04 * * *. If a residence address change is not to a fixed address, the offender * * * shall include in that notice a detailed description of the place

¹¹ R.C. 2937.07.

¹² 1st Dist. No. C-070388, 2008-Ohio-1842.

¹³ See id. at ¶5 (citations omitted).

or places at which the offender * * * intends to stay and, not later than the end of the first business day immediately following the day on which the person obtains a fixed residence address, shall provide that sheriff written notice of that fixed residence address.”

Former R.C. 2950.05(B) provides that an offender is required to register his new address with the sheriff of the county in which the new address is located, and that if the new residence is not a fixed address, the offender must provide a detailed description of the place or places where he intends to stay.

To convict Saunders, the state had to show that he had changed his residence address and failed to notify the sheriff of the change.¹⁴ Under former R.C. 2950.05, an offender may register as homeless, “as long as he describes his intended residence.”¹⁵ “An address ‘changes’ when one no longer lives at that address.”¹⁶

The state’s explanation of the circumstances established that Saunders was homeless and living in Washington Park, and that he had failed to personally report to the sheriff on October 15, 16, 17, and 19, 2007. Saunders had registered his Washington Park “address” with the sheriff. There is nothing in the record to show that Saunders had changed his residence address from Washington Park or that Saunders had obtained a fixed residence and failed to register.

We hold that the facts set forth in the state’s explanation of circumstances did not constitute an attempt to violate, or a violation of, former R.C. 2950.05. Therefore, the trial court erred in finding Saunders guilty. The assignment of error is sustained.

¹⁴ See former R.C. 2950.05(A), (B), and (E)(1).

¹⁵ See *State v. Ohmer*, 162 Ohio App.3d 150, 2005-Ohio-3487, 832 N.E.2d 1243, at ¶120.

¹⁶ See *id.* at ¶18, quoting *State v. Beasley* (Sept. 27, 2001), 8th Dist. No. 77761.

Therefore, the judgment of the trial court in the case numbered C-081080 is reversed and Saunders is hereby discharged from further prosecution, and the judgment of the trial court in the case numbered C-081081 is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., and **SUNDERMANN, J.**, concur.

DINKELACKER, J., concurs in part and dissents in part.

DINKELACKER, J., concurring in part and dissenting in part.

I certainly concur in the majority view regarding Saunders's second assignment of error. R.C. Chapter 2950 and Senate Bill 10 do not unconstitutionally infringe upon his right to travel.

Regarding the first assignment of error, I must respectfully dissent.

The facts provided to the trial court constituted sufficient evidence for a finding of guilty. Saunders was originally indicted for a violation of former R.C. 2950.05(E)(1). He tendered a no-contest plea to an attempted violation of that statute. The trial court, after a full explanation of the plea procedure, accepted Saunders plea of no contest.

The pertinent aspects of the statement of facts presented by the prosecutor are as follows:

“Mr. Saunders registered an address with the Hamilton County Sheriffs of 117 East 12th Street on July 27th of 2007. He was told to report back to register again on October 27th of 2007.

“Mr. Saunders then registered at the address of 4510 Colerain Avenue, Apartment Number 8, on August 16th of 2007. He was again told to report back by October 27th of 2007.

“Mr. Saunders then came into the Hamilton County Sheriff’s Office on September 4th of 2007 and claimed he was homeless. He was informed at that time of his obligation for being on a daily check-in basis.

“On October 12th, 2007 Mr. Saunders came into the sheriff’s office and said he was going to sleep in Washington Park, and he was told to return no later than October 15th of 2007.

“Mr. Saunders failed to show on October 15th, 16th, 17th and 19th of 2007. The sheriff’s office then presented charges for a violation of 2950.05 for failing to provide a change of address.”

The facts related to the court show that Saunders on October 12, 2007, told the sheriff’s office that he was going to sleep in Washington Park. That was in compliance with R.C. Chapter 2950. He was told on that date by the sheriff’s office to return on October 15, 2007, presumably to advise the sheriff of his residence or homeless status. He was required to report to the sheriff so the sheriff could comply with the law and keep tabs on Saunders. As Saunders did not show up on October 15, 16, 17, and 19, 2007, the sheriff did not know where he was or what his residency status was. Saunders, therefore, violated the statute.

The statute, in my view, required Saunders to advise the sheriff of his residency whereabouts, and his failure to comply with the sheriff’s order by not updating his residence or residency status allowed the trial court to make a guilty finding.

This court has previously stated that the purpose of the registration statute is to permit the sheriff to locate and keep track of sexually-oriented offenders. “[T]o allow a homeless defense to the registration provision would frustrate the legislative purpose.”¹⁷

On October 15, 16, 17, and 19, the Hamilton County Sheriff’s Office did not know what residence Saunders was claiming. The statute required him to provide such information.

The trial court did not err in finding Saunders guilty.

To the Clerk:

Enter upon the Journal of the Court on December 9, 2009
per order of the Court _____.
Presiding Judge

¹⁷ *Ohmer*, supra, at ¶17, quoting *State v. Parrish* (Dec. 18, 2000), 5th Dist. No. 00-CA-0070.